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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/701,058
Filing Date: November 04, 2003
Appellant(s): SEDLAK ET AL.

Kerry P. Sisselman
Lerner, Greenberg, Stemer L.L.P.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 15, 2007 appealing from the Office action mailed May 11, 2007.

(1) Real Party in Interest

A statement identifying by name the real party of interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,943,203 WANG 08-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1, 3, 4, 6, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Durham et al. (5,761,517) and Wang (5,943,203). Durham teaches a current measuring device (18), a controllable clock supply circuit (27, 19, 1-7, 10-13, 20) having an output with filtered clock pulses to be connected to a clock input of the circuit configuration (20, system_clock), and a clock generator (27) generating a constant maximum internal frequency. He also teaches a control device (21 & 14-17), connected to and controlling a pulse filter (1-7, 10-13, 20), which drives the filtered clock (via control signals sent via 16 and 17) based upon the measured current

consumption (via sensor, 18). He also teaches the pulse filter (1-7, 10-13, 20) suppressing individual clock pulses of the clock generator (27), when a high power condition is detected (via sensor, 18), in response to the control signal at the pulse filter's control input (new_data of registers 10-13). It is inherent to detect if such a condition exists, to have a definable threshold value and to see if the measured value exceeds it. (Abstract; Col. 1, lines 53-59; Col. 6, lines 24-52; Fig. 1A&B) Durham fails to explicitly teach the sensor being instantaneous and how the sensor (18) determines that a high power condition exists. Wang teaches a current being measured by an instantaneous current sensor and then compared with a threshold value by a comparator to determine if an over-current state has occurred (Col. 4, lines 14-19). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Wang's method of determining over-current into Durham's invention since Durham doesn't teach how it is determined and Wang teaches a method known in the art. It also would have been obvious to one of ordinary skill in the art at the time of the invention to use an instantaneous current sensor in Durham's invention to allow for more accurate measurements of the current and more precise control of the clock's frequency.

(10) Response to Argument

Regarding the underlined limitations, Durham DOES teach suppressing individual clock pulses, via pulse filter (1-7, 10-13, 20; in particular 7), generated by a clock signal generator (27), in response to a control signal at the pulse filter's control input (new_data of registers 10-13) from the control device (21, 14-17) (Fig. 1A&B). Durham also teaches a sensor (18) which detects the level of electrical current and determines if a "high power condition exists", and if so, it suppresses individual clock pulses until the high power condition ceases to exist (Col. 1, lines

55-59; Col. 6, lines 24-52). Durham fails to explicitly teach means for comparing the sensed current to a threshold value. However, Wang teaches sensing the current and comparing it to a threshold value and sends the output of the comparator to a control unit (Col. 4, lines 14-19).

The Examiner would like to note that the Appellant's arguments, on page 11 of 17, stating that his claims require or state "the pulse filter is directly controlled by the control signal" and "an individual pulse is filtered out whenever the control signal is provided" and "the filter suppresses an individual pulse, directly in response to the receipt of a control signal" have no basis. That is, the claims do not specifically state any of these limitations, particularly the underlined statements.

Regarding the Appellant's argument stating that Durham teaches a multitude of control signals instead of one control signal, please note that Durham teaches a more in-depth diagram than what the Appellant discloses in his application. The Appellant's lack of detail in not showing more than one signal being sent during the process of determining current being above a threshold and suppressing a clock pulse cannot serve as a basis for attacking the more complete circuit diagram disclosed by Durham. Nevertheless, the control signal(s) in Durham is only considered to be the output of pattern generator (17) of control device (21, and 14-17) to registers (10-13). One could also argue that it would have been obvious to make integral the outputs of the pattern generator. There would then be just one single control signal with the increased benefit of less wiring. It should also be noted that Durham's invention (particularly Figs. 1A&B) could easily be depicted similar to the Appellant's invention in Fig. 1; i.e., with less detail.

Regarding the argument on page 13 of 17 stating that Durham teaches sometimes where high power conditions are indicated but a current pulse is not filtered and vice versa, although the Examiner does not necessarily agree it is in any case moot. That is, as long as Durham filters a clock pulse at some time when a high power condition (i.e. high currents) exists, then it reads on the Appellant's claims.

Regarding the arguments (B. and C.) that the combination with Wang would destroy the Durham reference, the Durham reference teaches a system "which automatically change(s) the output of an oscillator clock" (1st line of Abstract). The Examiner agrees with the Appellant that Durham does it "incrementally", but that does NOT mean it's not also "instantaneous" and would therefore work effectively with Wang's instantaneous current sensor. Also, as stated in the Office Action, Durham doesn't explicitly teach the use of an instantaneous sensor. However, it most likely does, and for clarity, another reference was used that explicitly teaches the use of an instantaneous sensor. Any sensors that sense activity are instantaneous. Also, the Appellant is basically arguing the processing speed of Durham's control device and pulse filter circuit, which could very well process signals, well, instantaneously.

Regarding argument (D.), which basically is that Wang is non-analogous art, Wang is relevant to a particular problem with which the Applicant was concerned (i.e. an instantaneous current sensor). Also, the motivation to combine the Wang reference with the Durham (main) reference is to provide more precise and accurate measurements of the current and in turn more precise and accurate control of the clock's frequency.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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12/10/09